

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ROGER ALLEN HALL,

Petitioner,

v.

**CIVIL ACTION NO. 2:05 CV 54
CRIMINAL ACTION NO. 2:02 CR 12
(Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

On July 11, 2005, *pro se* Petitioner Roger Allen Hall filed a Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582. Upon receipt of the Petitioner's Motion, the Clerk of Court construed said Motion as a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255. Thereafter, in an April 13, 2006, Notification to Petitioner of Right to Consent to Proceed Under 28 U.S.C. § 2255 or to Proceed as Filed, United States Magistrate Judge John S. Kaull advised the Petitioner that his Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 had improperly been construed as a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 and provided the Petitioner with a form on which to advise the Court as to how he wanted his Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 to be treated. In an April 21, 2006, Election By Petitioner To Proceed Under 28 U.S.C. § 2255 Or To Proceed As Filed, the Petitioner advised the Court that he elected to proceed on his Motion as filed.

On April 27, 2006, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation wherein he recommended that Civil Action Number 2:05 CV 54, which was opened on July 11, 2005, pursuant to the Clerk of Court's decision to construe the Petitioner's Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 as a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, be dismissed; that the Clerk of Court be directed to terminate the § 2255 Motion docketed in Criminal Action Number 2:02 CR 12 and to re-file the same as a Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582; and that the Petitioner's Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 be denied.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the Petitioner with ten (10) days from the date he was served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation. The Court's review of the docket in the above-styled action reveals that no objections to Magistrate Judge Kaull's April 27, 2006, Opinion/Report And Recommendation have been filed by the Petitioner and that this matter is now ripe for review.

Upon consideration of said Opinion/Report and Recommendation, and having received no written objections thereto¹, it is

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997);

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled action on April 27, 2006 (Docket No. 52), be, and the same is hereby, **ACCEPTED** in totality. Consistent with said Opinion/Report And Recommendation, it is, accordingly,

ORDERED that Civil Action Number 2:05 CV 54, which was opened on July 11, 2005, pursuant to the Clerk of Court's decision to construe the Petitioner's Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 as a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, be, and the same is hereby, **DISMISSED**. It is further

ORDERED that the Clerk of Court shall terminate the § 2255 Motion docketed in Criminal Action Number 2:02 CR 12 and re-file the same as a Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582. It is further

ORDERED that the Petitioner's Motion For Re-Sentencing Pursuant To Title 18 U.S.C. § 3582 (Docket No. 49) be, and the same is hereby, **DENIED**.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner.

ENTER: July 20, 2006

/S/ Robert E. Maxwell
United States District Judge

Thomas v. Arn, 474 U.S. 140, 148-153 (1985).